SPEECH

OF

MR. THOMAS, OF MASSACHUSETTS,

ON

CONFISCATION.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MAY 24, 1862.

The House having under consideration the bills to confiscate the property and free from servitude the slaves of rebels, Mr. THOMAS, of Massachusetts, said:

Mr. SPEAKER: Before proceeding to the discussion of the measures before the House, I hope I may be pardoned for making one or two preliminary suggestions. At as early a day as December, 1860, I expressed my earnest conviction of the course to be pursued by the Government and people of this country in relation to secession—that it was but another and an unmanly form of rebellion, and that it must be met at the threshold and crushed by arms; that after an ordinance of secession, as before, it was the duty of the Government to execute, in every part of this indivisible Republic, the Constitution and the laws.

But I believed then, and believe now, that the life of the States is just as essential a part of this Union as the life of the central power; that their life is indeed one life; and when the gentleman from New York, [Mr. SEDGWICK,] yesterday assured the House that the statement made by me in a former speech, "that when the conflict of arms ceases the nation will remain, and the States will remain essential parts of the body politic," "was one of those old and audacious propositions which cannot fail to shock the common sense of mankind," I felt that either he or I had wholly misconceived the nature and structure of the Government under which we live. *E pluribus unum.* Of many States, one nation. The Union is not a graveyard for the burial of dead commonwealths. The body politic is safer with a severed limb than with a dead one. But the gentleman from New York has made progress in this doctrine of State suicide, and assures the House not only of the death of the States, but that the people "by permission of the military power, and not before," can form new goverments and seek again admission here. Mark the words, "by permission of the military power, and not before." Where are we drifting, Mr. Speaker, and what is the end. These are not hasty words, but the deliberately uttered language of one, who no less by culture and capacity than by your appointment, is a leader of the House. "By permission of the military power, and not before." I repeat the question, where are we drifting, what is the end?

I was guilty of another audacious act in the view of the gentleman from New York. I awoke St. Paul from the dead to give countenance to my doctrine. The gentleman must pardon me, Mr. Speaker; I must be an old fogy. It never occurred to me that the epistles of Paul were among the dead things of the past. I supposed they were the well-springs of immortal life, and, like the gospels, the same to-day, yesterday, and forever. I am bound to presume this was a heedless remark, for I am sure the gentleman can have no sympathy with the new school of philosophy which has outgrown the Gospel, and which, making equal war with the Christian church and with the Union, has issued the new evangel, in which abstract love of the race is substituted for practical love of our neighbor, confusion for social order, freedom from restraint for the liberty of obedience. But let this pass.

Mr. Speaker, no man can desire more earnestly than I do the suppression of this rebellion, and the restoration of order, unity, and peace. But there are two things I cannot, I will not do. I will not trample beneath my feet the Constitution I have sworn before God to support. I will not violate, even against these rebels, the law of nations as recognized and upheld by all civilized and Christian States. I believe I must do both to vote for these bills, and at the same time do an act unwise and especially adapted to defeat the end in view, if that end be the restoration of the Union and the salvation of the Republic.

I propose very briefly to examine the bills before the House (and especially that as to the confiscation of property) under the law of nations and under the Constitution of the United States, and then to say a word upon their policy.

The positions assumed by the friends of these measures are, that we may deal with

those engaged in this rebellion as public enemies and as traitors; that regarding them as enemies, we may use against them all the powers granted by the law of nations; and viewing them as rebels or traitors, we may use against them all the powers granted by the Constitution; and that in either view, these bills can be sustained.

Dealing with them as public enemies, it is said that under the existing law of nations we have a clear right to confiscate the entire private property on the land as well as the sea, real and personal, of those in arms, and of non combatants who may in any way give aid and comfort to the rebellion. This first bill sweeps over the whole ground. I deny the proposition, Mr. Speaker. In the name of that public law whose every humane sentiment it violates; in the name of that civilization whose amenities it forgets and whose progress it overlooks; in the name of human nature itself whose better instincts it outrages, I deny it. Such is not the law of nations.

To give a plausible aspect to the proposition, the advocates of this bill have gone back to Grotius and to Bynkershoek for the rules of war, and even then have ommitted to give what Grotius calls the *temperamenta*, or restraints upon the rules. You might as well attempt to substitute the code of Moses for the beatitudes of the Gospel. Anything can be established by such resort to the authorities. By the older writers you can prove not only all the property of the vanquished may be taken, but that every prisoner may be put to death. By Grotius I can show that all persons taken in war are slaves, and that this is the lot even of all found within the enemy's boundaries when the war broke out; that this iron rule applies not to men only, but to their wives and children; nay, further, that the master has over the slaves the power of life and death. (*De Jure Belle et Pacis*, book 3, chap. 7, secs. 1, 2, and 3.) I cite a short passage from the chapter referred to.

"The effects of this right are unlimited, so that the master may do anything lawfully to the slave, as Seneca says. There is no suffering which may not be inflicted on such slaves with impunity; no act which may not in any manner be commanded or extorted: so that even cruelty in the masters, towards persons of servile condition, is unpunished, except so far as the civil law imposes limits and punishments for cruelty. In all nations alike, says Caius, we may see that the masters have the power of life and death over slaves. He adds afterwards that by the Roman law limits were set to this power, that is, on Roman ground. So Donatus in Terence, 'what is not lawful from a master to a slave?'"

By Bynkershoek you may establish that the conqueror has over the vanquished the power of life and death, and the power of selling them into slavery; that everything is lawful in war; the use of poison and the destruction of the unarmed and defenceless.—(Law of War, Duponceau's translation, pp. 2, 18, 19, 20.)

But what then, Mr. Speaker? Does any man suppose that these writers give us the laws of war as upheld, sanctioned, and used by the Christian and civilized States of to-day? Nothing would be further from the fact. Commerce, civilization, Christian culture, have tempered and softened the rigor of the ancient rules; and the State which should to-day assume to put them in practice would be an outcast from the society of nations. Nay, more, they would combine, and rightfully combine, to stay its hand. For the modern law of war, you must look to the usages of civilized States, and to the publicists who have explained and enforced them. Those usages constitute themselves the laws of war.

In relation to the capture and confiscation of private property on the land, I venture to say, with great confidence, and after careful examination, that the result of the whole matter has never been better stated than by our own great publicist, Mr. Wheaton:

"But by the modern usages of nations, which has now acquired the force of law, temples of religion, public edifices devoted to civil purposes only, monuments of art, and repositories of science, are exempted from the general operations of war. Private property on land is also exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and of military contributions levied upon the inhabitants of the hostile territory. This exemption extends even to the case of an absolute and unqualified conquest of the enemy's country."—*Elements of International Law*, p. 421.

It is not too much to say that no careful student of international law will deny that this passage from Mr. Wheaton fairly expresses the modern usage and law upon the subject; but you will permit me to refer for a moment to the doctrine stated by my illustrious predecessor, whose name has been so often invoked in this debate, John Quincy Adams. "Our object," he says, in a letter to the Secretary of State, "is the restoration of all the property, including slaves, which, by the usages of war among civilized nations, ought not to have been taken." "All private property on shore was of that description. It was entitled by the laws of war to exemption from capture." (Mr. Adams to the Secretary of State, August 22, 1815.)

Again, he says, in a letter to Lord Castlereagh, February 17, 1816:

"But as by the same usages of civilized nations private property is not the subject of lawful capture in war upon the land, it is perfectly clear that in every stipulation private property shall be respected, or that upon the restoration of places during the war, it shall not be carried away.'—*American State Papers*, pp. 116, 117, 122, 123.

A volume might be filled with like citations from modern writers. I will content myself with perhaps the latest expression, and from a great statesman, a native of Massachusetts, and of my own county of Worcester:

"The prevalence of Christianity and the progress of civilization have greatly mitigated the severity of the ancient mode of prosecuting hostilities." * * * * "It is a generally received rule of modern warfare, so far at least as operations upon land are concerned, that the persons and effects of non-combatants are to be respected. The wan on pillage or uncompensated appropriation of individual property by an army even in possession of an enemy's country, is against the usage of modern times. Such a proceeding at this day would be condemned by the enlightened judgment of the world, unless warranted by particular circumstances. Every consideration which upholds this conduct in regard to a war on land favors the application of the same rule to the persons and property of citizens of the belligerants found upon the ocean."—*Mr Marcy to the Count de Sartiges*, July 28, 1856.

Such I believe to be the settled law and usage of nations. A careful examination of the arguments made on this subject has served but to strengthen and deepen this conviction.

I do not forget, Mr. Speaker, that the case of Brown *vs.* The United States, (8 Cranch, 110,) has been often referred to in this debate as affirming the contrary rule. The points decided in that case I have before stated to the House. The points, the only points, decided were, that British property found in the United States on land, at the commencement of hostilities, (war of 1812,) could not be condemned as enemy's property without an act of Congress for that purpose, and that the declaration of war was not sufficient. Gentlemen have referred to the *obiter dicta*, the discussions of the judges, as the decision of the court. The distinction is familiar and vital, but has been lost sight of in this debate. Only the points necessarily involved in the result constitute the decision. Let me illustrate the matter by a familiar case, that of Dred Scott. It is the matter outside of the decision, what a distinguished jurist has called the slopping over of the court, that was so fruitful in mischief. The point decided by the majority of the court was, that Dred Scott was not a citizen of Missouri, so as to be able to maintain an action in the courts of the United States upon the grounds of such citizenship. Under the conflicting decisions in the courts of Missouri, I have always thought that case might have been decided either way without attracting public attention or animadversion. All that was said outside of that point has no more legal force than the paper on which it was written. Use the saying of the judges in that case as they have used those in Brown *vs.* The United States, and you can establish the rightful existence of slavery in the Territories, the invalidity of the Missouri compromise, and, God only knows, how many other errors in history and law. Treat what is said by the majority of the court outside of the point decided as argument—and it is nothing more—and slavery in the Territories is without any legal prop or support. And I may say, in passing, Mr. Speaker, there never was in my judgment a plausible argument even to establish the power and right of the master to take his slave into the Territories and hold him in servitude. Slavery exists by local law and usage only. It has no extra territorial power. The moment the slave, with the consent of the master, is taken beyond the line of the place where the law tolerates its existence, the chains fall from his limbs. Property in the slave there may be by local municipal law, but not by the law of nature and of nations, not by that universal, immutable law of which Cicero speaks so divinely in the *Republic*. May I give the Latin, Mr. Speaker? "*Nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed et omnes gentes et omni tempore una lex sempiterna et immutabilis continebit.*" Nobler thought in nobler words never fell from human lips or pen.

But I return from this digression to say, Mr. Speaker, that the distinction sought to be established by the passages cited from the discussions in the case of Brown *vs.* The United States, between the law of war and the mitigations of that law which the usages of modern nations have introduced, has no foundation in principle. It is in the usages of civilized and Christian nations that we are to seek the law of nations. As the law-merchant has grown up from the usages of trade and commerce, so has the modern law of nations grown up from the usages of enlightened States. The ancient barbarous rules of war have been tempered and softened by commerce, by the arts, by diffused culture, and, more than all, by the spirit of the Gospel; and all Christian States recognize with joy and with obedience the milder law. In the jurisprudence of nations, as in our own, there is one law felt above all others—the law of progress. Apparently at rest, it is ever silently moving onward, quickened, purified, and illumined by the inspiration of that higher law, 'whose seat is the bosom of God, and its voice the harmony of the world." The great prophetic thought of Pascal may yet be realized—"*Deux lois suffisent pour régler la république chrétienne, mieux que toutes les lois politiques: l'amour de Dieu, et celui du prochain.*"

I do not know that I can more fitly conclude what I can say, in the brief time allotted to me, on the capture and confiscation of the private property of rebels, viewed in the light of international law, than in the words of John Marshall, near the close of his judicial life:

"It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law"—

mark the words, Mr. Speaker, "the modern usage of nations, which has become law"—

"would be violated: that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated and private rights

annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed. If this be the modern rule, even in cases of conquest, who can doubt its application to the case of an amicable cession of territory?"—*United States* vs. *Percheman*, 7 *Peters*, 51.

It is against the light of these considerations and authorities, and against the prevailing law and judgment of the Christian world, that it has been so often confidently, I will not say flippantly, asserted on this floor that there could be no doubt of our power, under the law of nations, to seize and confiscate the entire property of the rebels as public enemies.

I pass to the second branch of the subject—our power, under the Constitution, to pass these bills. It has been often said, in the course of this debate, and in terms without qualification, that the rebels hold to us the two-fold relation of enemies and traitors, and that we may use against them all the appliances of war and all the penalties of municipal law. To a certain limited extent, the proposition is sound. Treason consists in levying war against the United States. The act of treason is an act of war, and you use the powers of war to meet and subdue traitors in arms against the government.

It is also true that, in the relations between the Government and its subjects, the rightful power of punishment does not necessarily cease with the war; but is it also true that you can exercise both powers at the same time? And is not here the utter fallacy of this whole argument? Take an example. You have been accustomed to exchange flags of truce; you have recognized, to a certain extent, belligerent powers. An officer of the rebel army comes to you under a flag of truce: can you take him from under that flag and hang him for treason? He stands to you in the double relation of enemy and traitor, but you cannot touch a hair of his head while he is under that white flag. Take another case. You have stipulated for an exchange of prisoners of war. The cartel has been sent, and the prisoner of war is on his way to make the exchange. Does any man on this floor say that you can take him on his way and try and hang him? And if not, why not? The plain answer is, because having recognized him as under the law of nations, while he is subject to its power, he is entitled to its protection.

Pass what bills we may, Mr. Speaker, when the war is ended these questions will come up to be settled. I hope I may be pardoned for saying, with great respect, to my friends on all sides of the House, that they will be as difficult questions as statesmen or jurists were ever called upon to decide, and that it is wise to reserve, as far as possible, our judgment. No thoughtful man will content himself with the declaration that belligerent rebels have no rights. Passion may say that, reason never. Passion, sooner or later, subsides, and reason reascends the judgment seat, and these questions must be answered there and to that august tribunal before which the conduct of men and nations passes in view—the enlightened opinion of the Christian world. Such questions are, how far, *flagrante bello*, (while war was raging,) with respect to prisoners of war the civil power was restrained; how far the treating with rebels and exchanging them as prisoners of war may affect their punishment as traitors, either in person or property. I express no opinion, except to say they must be calmly met and answered.

But assuming, for the sake of the argument, that during the war even, and while recognizing their belligerent rights, you may visit upon the rebels the full force and weight of the municipal law, I proceed to inquire whether the mode proposed by these bills is in conformity to the organic and supreme law, the Constitution of the United States. I am not to be deterred from the discussion by any suggestions from weak or wicked men —none other can make them—of leniency to rebels and compassion for traitors. There is but little elevation in contempt, but such suggestions do not rise high enough to meet it. They pass by me as the idle wind. If a man has no other arrows in his quiver let him use these; I am content.

The favorite argument, Mr. Speaker, of those who claim for Congress the power to confiscate the property of traitors without trial by jury is, that the want of this power would show a fatal weakness in the Constitution and a lack of wisdom and foresight in its framers. They will not believe the Constitution is so weak and helpless, so incapable of self-defence. Nothing, in my judgment, so shows its majesty and strength, pray God, immortal strength. The powers of war are almost infinite. The resources of this vast country spring to your open hand. All that men have, even their lives, are at the service of their country; and in this great conflict how nobly and freely given. You can raise an army of seven hundred thousand men; you can give them all the best appliances of war; you can cover your bays and rivers and seas with your Navy; you can blockade a coast of three thousand miles; you may cut down the last rebel on the field of battle. Such is the power of war. But, Mr. Speaker, when you shall have used all these powers, when peace shall have been restored, or when the rebels shall come and lay themselves at your feet, or be taken captive by your arms, then, also, will the power of that Constitution be made manifest; then, also, will this Government be shown to be the most powerful and the noblest on the earth, not because the captured rebel is at your mercy, but because he is not. Because, under the shield of the Constitution, the rebel at your feet is stronger than armies, stronger than navies. You cannot touch a hair of his head or

take from him a dollar of his property until you shall have tried and condemned him by the judgment of his peers and by the law of the land. Does this show the weakness of the Constitution, or does it show its transcendent strength? Are these written constitutions established to give to Government power, without limit, over the property, liberty, and life of the citizen, or are they made to define and limit the power of the Government, and to shield and protect the rights of the subject?

I have always been taught that the people is the sovereign; that these constitutions are carefully-defined prepared grants from the sovereign power, so framed as to establish justice, and at the same time secure the blessings of liberty and the protection of law even to the humblest and meanest citizen. I know, Mr. Speaker, that these are getting to be old-fashioned sentiments. Magna Charta is soiled and worm-eaten. The Bill of Rights, the muniments of personal freedom, habeas corpus, trial by jury, what are they all worth in comparison with this new safeguard of liberty, the proceeding *in rem*.

Were you ever at Runnymede, Mr. Speaker? I remember going down, on a beautiful day in July, from Windsor Castle to the plain, and crossing the narrow channel of the Thames to that little island on which, more than six centuries ago, in the early gray of morning, those sturdy barons wrested from an unwilling king the first great charter of English freedom—the germ of life of the civil liberty we have to-day. I could hardly have been more moved had I stood in the village and by the manger in which was cradled "the Son of Mary and the Son of God." From the gray of that morning streamed the rays which, uplifting with the hours, coursing with the years, and keeping pace with the centuries, have encircled the whole earth with the glorious light of English liberty. The liberty for which our fathers planted these Commonwealths in the wilderness; for which they went through the baptism of fire and blood in the Revolution; which they imbedded and hoped to make immortal in the Constitution; without which the Constitution would not be worth the parchment on which it was written.

But I must not linger by the way, Mr. Speaker. What do these bills propose? The immediate object is to confiscate the property of the rebels. For what end? For punishment, is it not? If you strip these men of their property, it is not because they are innocent, although this bill does, in fact, confiscate the property of persons who may be guiltless of any offence. But the theory of the bill is to punish men for the crime of rebellion, or treason, or give it what name you will. The bill, indeed, recites, as an ulterior purpose, the payment of the expenses of the rebellion. But there is no man on this floor so verdant as to suppose this means much. If the courts enforce the statute, (I believe they will not,) how much treasure can you wring from those States, poor at the best, but whom the close of this war will leave impoverished, seared, and swept, as by fire? You might as well pasture your cattle on the desert of Sahara. The land will indeed be left, but who will be your purchasers, when they know they must take at the best a doubtful title, but a sure, bitter, and lasting feud. The strife and hate growing out of the confiscations of the Revolution are scarcely yet appeased, and it was with these confiscations fresh in the memories of the framers of the Constitution that the limitation of the power of forfeiture was adopted. There never was a wilder dream than that of paying the expenses of the rebellion with the fruits of confiscation.

The real object of the bill is punishment, the punishment of an offence clearly defined in the Constitution, of the highest offence known to the laws. The punishment is the forfeiture of the property of the offender. The forfeiture is to be established before judicial tribunals, and upon proof of the guilt of the owner. You have, then, these three elements: punishment—upon proof of the commission of crimes—before a judicial tribunal. One element is wanting. One has been diligently excluded—trial by jury. Human ingenuity has been exhausted to shut the door against it, and your bill is like Hamlet with the Prince of Denmark omitted by particular request. Here is the plain, imperative mandate of the Constitution, which he who run may read:

"The trial of all crimes, except in cases of impeachment, shall be by jury."—*Constitution, article 3, section 2*

The property to which the bill applies is not, under the law of nations, prize, it is not booty, it is not contraband of war. It is not enforced military contribution. It is not property used or employed in the war or in resistance to the laws, and, therefore, clearly to be distinguished from that covered by the statute of August 6, 1861. It is private property outside of the conflict of arms, forfeited not because it is the instrument of offence, but as a penalty for the crime of the owner. The disguise of the proceeding *in rem* is too thin and transparent. No lawyer, no man of common sense will be deceived by it. The proceeding, in spirit, in substance, and in effect, is the punishment of treason by the forfeiture of a man's entire estate, real and personal, without trial by jury, and in utter disregard of the provision of the Constitution which limits the forfeiture for treason to the life of the person attainted. (Article 3, section 6.)

Was there ever a balder contrivance to get around the plainest and most sacred provisions of the Constitution than this attempt to get a man's farm, his cattle and fodder,

his plow, spade, and hoe into a maritime court and try them by the law of prize? With all respect for my excellent friends upon the committee, such a proposition "shocks our common sense" as well as our sense of justice and right. You make the plea of necessity, and necessity is the mother of invention; but do you expect to satisfy sensible men, when reason resumes its sway, that under a Constitution which defines treason to consist in levying war against the United States, which will not suffer the traitor to be condemned except by the judgment of his peers, and when condemned will not forfeit his estate except during his life, you can, by this proceeding *in rem*, without indictment, without trial by jury, without the proof of two witnesses, (article 3, section 3,) for treason, for the act of levying war, deprive him of all his estate, real and personal, for life and in fee? Nay, more; and that, after he has thus been punished, without trial by jury, and by the loss of his whole estate, you can, for the same act of levying war, try him and hang him? To suggest a doubt whether, after all, this is plain sailing under the flag of the Constitution, is to have too nice constitutional scruples!

I have touched but upon one or two legal objections to these bills. Their name is legion; but I must hasten to a more minute examination of the bills themselves. I do not wish to say the bills are hastily drawn. If right in principle, defects of form, or want of detail, can be supplied. In attempting however legislation involving a new principle, or a new application of a principle, it is a pretty good test to let it be run through the machinery of a carefully-drawn statute, and see how it works. I should have liked that test applied here.

Looking now to the general features of the confiscation bill, I desire the House to observe that the bill, though not in form, is in substance and effect retroactive. It takes effect from its passage. It applies to all acts committed after its passage. As there are whole districts, States even, where the law cannot be promulgated, and who will remain in ignorance of its passage, the law, as to them, will be *ex post facto*. They will neither know, nor have the means of knowing, of the existence of the penalty when the act is committed. Will you say it is their own fault? I beg you to consider that, since your protection has been lost and until it is restored, there has been and can be no really free choice with the individual citizen whom he shall obey. What measure of punishment would you meet to a citizen of Jacksonville, who, after the withdrawal of your army, should yield to the powers that be, though certainly *not* ordained of God.

I ask the attention of the House, and a just and humane people, if these words shall ever reach them, to the wide sweep of this bill. You would infer from the arguments of its friends that the bill was to reach only the leaders and instigators of rebellion. How, if that were so, the limitation and the payment of the expenses of rebellion from confiscation would hang together, has not been explained. But the *fact* is far otherwise.

The first section includes several classes, and first, all officers of the rebel army or navy, non-commissioned as well as commissioned. Officers of high rank should be included; but there is no sound reason whatever for going down to sergents and corporals. The second, third, and fourth classes embrace persons who shall hold certain offices in the confederate States, or any of them, including judges of the State courts and members of State Legislatures and conventions. In all these cases the mere holding of the office is made the ground of confiscation, without regard to the manner in which the duties shall be discharged, or to whether those duties involve any active service against the national Government; men, it may be, whom the rebellion found in office and who continue in the regular exercise of their functions. Here, for example, is the judge of probate or surrogate of a county. Rebellion breaks out; men will die and estates must be settled and care had of widows and orphans. To visit this man with the confiscation of his estate for continuing quietly to discharge his duties, is equally harsh and absurd.

The same remark applies, possibly with increased force, to persons embraced in the fifth class, those holding any office or agency under any of the States of the confederacy or any of the laws thereof, whether such office or agency be State or municipal in its name or character. Every justice of the peace, notary public, or town clerk, treasurer, selectman, assessor, constable, overseer of the poor, undertaker, even, must resign his functions or become a pauper. The result, if successful, is a suspension of civil order, or, on the other hand, the severest punishment for a venial offence, if it be an offence.

The second section includes all persons who, being engaged in rebellion, or aiding and abetting it, shall not, within sixty days after proclamation from the President, desist and return to their allegiance. Sixty days seems to be a reasonable notice; but if the parties are in such condition that the notice cannot reach them, then it is not notice. What may be fairly and justly required is that men shall return to their allegiance the moment they have reasonable assurance of permanent protection from the national Government. It is idle to look for it before such protection is possible. To ask a man in the interior of a cotton State to abjure the rebel Government and return to his allegiance in the present condition of things, is to ask a moral impossibility. To confiscate his property for not doing so, cannot be justified.

A word upon another harsh feature of the bill. With respect to every person within

its scope, and without the least discrimination as to degrees of guilt, a clean sweep of property is made. There is no exemption of necessary household furniture, or of provisions, or of tools of trade. Nothing is spared—the bed on which the wife sleeps, the cradle of the child, the pork, or flour barrel. Taken in connection with the fact that the bill declares that the President *shall* cause the seizure to be made, and not merely that he *may*, that provision is made for the sale of perishable property, and that none is made for the remission, in whole or part, of the forfeiture, and we cannot fail to understand the spirit in which the bill is conceived, or the impression it will not fail to make on the friends of this country abroad, who cannot fully appreciate the bitterness which civil conflict engenders, or, if they do, will not pardon statesmen for yielding to its influence. It is plain that the angel of mercy never found his way to the committee room; or, if he went in with my friend from Kentucky [Mr. MALLORY,] or my friend from New Jersey, [Mr. COBB,] he was politely bowed out, with the assurance that neither rebels nor those dependent upon them had any rights.

I ought, however, to add, Mr. Speaker, that looking upon seizure and confiscation as a penalty for crime—treason or rebellion—the President, under his general power of pardon, might remit the punishment. But then the other conclusion will follow, that without trial by jury, no valid forfeiture can be effected.

The second bill, for the emancipation of the slaves of rebels, is much broader in its scope, including every person who shall engage in rebellion or aid and abet it. The insertion of the word "wilfully," lawyers will see, does not affect the legal construction. There are considerations of humanity in favor of this bill which do not apply to the first; but it is not restricted to slaves used in the rebellion, and *no* form of judicial proceeding is provided. The constitutional objections apply to it with at least equal force.

That the bills before the House are in violation of the law of nations and of the Constitution I cannot—I say it with all deference to others—I cannot entertain a doubt. My path of duty is plain. The duty of obedience to that Constitution was never more imperative than now. I am not disposed to deny that I have for it a superstitious reverence. I have "worshipped it from my forefathers." In the school of rigid discipline by which we were prepared for it, in the struggles out of which it was born, the seven years of bitter conflict, and the seven darker years in which that conflict seemed to be fruitless of good, in the wisdom with which it was constructed and first administered and set in motion, in the beneficent Government it has secured for more than two generations, in the blessed influences it has exerted upon the cause of freedom and humanity the world over, I cannot fail to recognize the hand of a guiding and loving Providence. But not for the blessed memories of the past only do I cling to it. He must be blinded with excess of light, or with the want of it, who does not see that to this nation, trembling on the verge of dissolution, it is the only possible bond of unity. With this conviction wrought into the very texture of my being, I believe I can appreciate this conflict, can understand the necessity of using all the powers given by the Constitution for the suppression of this rebellion. They are, as I believe, and as the progress of our arms attest ample for the purpose. I do not, therefore, see the wisdom of violating or impairing the Constitution in the effort to save it, or of passing from the pestilent heresy of State secession to the equally fatal one of State suicide. The fruits of the first are anarchy and perpetual border war; of the second the growth of military power, the loss of the centrifugal force of the States, the merging of the States in the central Government; a republic in name and form in substance and effect a despotism.

Mr. Speaker, at a time like this the individual is nothing, the country every thing. He cannot truly serve or love his country who is anxious about himself. He cannot have a single eye to the welfare of the Republic if both eyes are turned homeward. He cannot keep step to the music of the Union who is grinding fantasias for the village of Buncombe. One may desire, however, not to be wholly misunderstood. It has been said that I am opposed to any emancipation of the slaves of rebels. Nothing can be further from the truth. The first provision for emancipation, that in the statute of August 6, 1861, liberating all slaves employed in the rebellion, I drew with my own hand, believing now, as then, that it is valid and just. For the abolition of slavery in this District, for the interdiction of slavery in the Territories, for the new article of war forbidding the officers of the army to surrender fugitives from service, my votes are on record. I voted for the resolution recommended by the President for aid to the States in the work of gradual emancipation, though I could not fail to see that it was on the verge of authority, and must perhaps finally rest, like the purchase of Louisiana, upon general consent. My views of the power of the Commander-in-Chief on the subject of emancipation are fully stated in remarks submitted to the House on the 10th of April. I will not repeat them. They are ample for any emergency. In the bill I introduced "for the more effectual suppression of the rebellion," but which, in the present temper of the House, I thought it useless to press, I have indicated a practical method by which the slaves of rebels may be emancipated, as the penalty for crime, upon conviction or default of the offender. But, Mr. Speaker, I have kept my eye steadily upon the end for which this war is waged,

the only end for which it can be justified—the integrity of the Union. I have firmly resisted, and shall continue firmly to resist, every effort, open or disguised, to convert this war for the Union into a war for emancipation, at the risk—no, not at the risk, for the words do not express what I mean or feel; with the moral certainty—of defeating the purpose for which the war was begun. With these convictions, it is scarcely necessary to say I cordially approve the course of President Lincoln in modifying the proclamation of General Frémont, and declaring null and void the order of General Hunter. For the wisdom and patriotism which have illustrated the course of this great magistrate he has my sincere respect and gratitude.

A word upon the policy and wisdom of these measures: A great work has been done by this nation. It is easy to find fault. In operations upon so large a scale, requiring so many agencies, mistakes and blunders will be made. But a just criticism, looking upon the work as a whole, cannot fail to commend the patriotism of the people and the energy of the Government. I know it has been prettily said that we have prosecuted this war upon "a rose-water policy." I do not know that I fully comprehend what is meant, but probably the rebels, in view of that long blockade, with the fresh memories of Port Royal, Newbern, Pulaski, Donelson, Pea Ridge, Shiloh, the Lower Mississippi, and Yorktown, and the ever tightening folds of the constriction, might say, with Juliet, the

——— "rose
By any other name would smell as sweet."

Our armies and navies are victorious. The war seems to be drawing to a close. There is reasonable ground to hope that before the next session of Congress the power of the rebellion will be broken, and the sword have substantially done its work. But I cannot conceal from myself that our great difficulties lie beyond the conflict of arms. It is the part of wise courage to look them calmly in the face, to gauge them, and gird up our loins to meet them. Action will be needed, not words; judgment, not passion. Unless there be calm and fearless statesmanship, your victories will have been won in vain—a statesmanship that honors and respects the people, but is willing to abide its sober second thought.

Civil wars, like family feuds, have been fierce, bitter, and unrelenting. The bitterness and ferocity manifested towards us by the rebels cannot but arouse the spirit of retaliation and thirst for vengeance. If we yield to the fierce temptation, the war will become one of extermination. Thus far, while prosecuting the war with vigor, we have shown the moderation and humanity becoming a great people. I pray we may continue in this course. There is wisdom in the fable of the sun and the north wind. There is power in forbearance, in magnanimity, in obedience to the law we seek to enforce, in the spirit of forgiveness, in the "mercy which seasons justice" Christ knew what is in man; the Gospel is not a lie. There never was a juster war than that which we are waging. It is strictly a war of self-defence—the defence of a free and benificent Governmen against traitors in arms against her. But we may not forget that to those in the southern States who believe in the right of secession this war cannot but wear the aspect of a war of invasion and subjugation. This terrible mistake may account for their bitterness, though it is no palliation for their barbarities.

Mr. Speaker, upon no subject has there been more or looser declamation than on the causes of this rebellion. At one moment we are assured that slavery is the one great criminal, at the next that it was brought about by the fraud, falsehood, and violence of a few unprincipled leaders.

Passing this subject now with the remark that masses of men are not easily moved, that civil convulsions are fed by deeper fires, I ask your attention to two facts which seem to be clearly established. The first is, that when the acts of secession were passed the majority of the people of the revolting States, with the exception of South Carolina, were loyal to the Union; and the second is, that to-day their feelings are changed, their loyalty turned to treason and love to hate. Passion is eloquent; but do not content yourselves with bitter denunciation. Pause, I beseech and adjure you, and inquire what is the cause.

The war brought to their homes and firesides will account for much; but do you not believe that a conviction has been settling down into the minds of men, who at the beginning of our troubles were loyal, that these extreme measures point to some other end than the restoration of the Union with the rights of the States preserved; that they mean subjugation and reconstruction "by permission of the military power, and not before?" Once committed to this policy, once afloat on that sea of revolution, neither you nor I may live to reach the haven of Union and peace.

If these measures shall be finally adopted, I pray God I may prove a false prophet, and that out of this nettle danger we may pluck the flower safety: that His strength may be manifested in our weakness, and that He may overrule all our errors and shortcomings for the good of our beloved country.

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